

REMARKS

As suggested in the Office Action, the claims have been re-presented as new claims in clear/clean form. The re-presentation of the claims does not narrow the scope of the claims. They are re-presented to avoid the alleged confusion created by a clerical error in the Preliminary Amendment. The rejection under 35 U.S.C. § 112, second paragraph, is rendered moot by the re-presentation of the claims.

Applicants urge that, should the claims be rejected in the next Office Action, the rejection should not be made Final, as proposed in this Office Action. Although, admittedly, there was an error in the claim numbering in the Preliminary Amendment, it is urged that a minimal amount of review (comparing the original and amended claims) would have made clear that the claims intended for amendment were claims 5, 6 and 8 (not 1, 2 and 8). Such assumption is the only reasonable one that could have – and should have – been made and an examination on the merits should have been provided. Citation of new prior art and making of any new art rejections in the next Office Action Final, will deny applicants a full and fair opportunity to prosecute this application, as they will then be restricted in the manner of amendments/reply they can subsequently make. Such denial would not be warranted by an obvious clerical error in the Preliminary Amendment, the true intent of which would be clear using only a minimal amount of reasoning. Applicants should not have their significant filing fees taken without a full and fair opportunity to prosecute the application. Making the first action on the merits Final, would result in such an unfair taking. Thus, it is urged that, if the next Office Action is a rejection on the merits, it should not be a Final action.

It is submitted that the claims are in condition for allowance. However, the Examiner is kindly invited to contact the undersigned to discuss any unresolved matters.

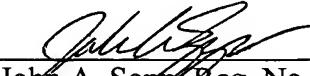
March 10, 2004

Reply to Office Action of 02/02/2004

Page 7

The Commissioner is hereby authorized to charge any fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,


John A. Sopp, Reg. No. 33,103
Attorney for Applicants

MILLEN, WHITE, ZELANO &
BRANIGAN, P.C.

Arlington Courthouse Plaza 1, Suite 1400
2200 Clarendon Boulevard
Arlington, Virginia 22201
Telephone: (703) 243-6333
Facsimile: (703) 243-6410

Attorney Docket No.: MERCK-2320

Date: March 10, 2004

JAS\slm:K:\Merck\2320\Reply to 2-2-04 OA.doc